IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.663 OF 2006
IN
WRIT PETITION (PIL) NO. 87 OF 2006

Bombay Environmental Action Group & Anr. ...Petitioners

Versus

The State of Maharashtra and others ... Respondents

And

The Mumbai Municipal Corporation ....Applicant

Mr. K.K. Singhvi, Senior Advocate, with Mrs. Shobha Ajitkumar, for applicant abovenamed.

Mr. N.H. Seervai, Senior Advocate, with Mr. Gautam Patel, and Mr. Jagtiyani instructed by M/s. M.V. Jayakar & Company, for the petitioners to show cause.

Mr. R.M. Kadam, Advocate General, with Mr. K.R. Belosay, Government Pleader, for respondent Nos.1,5, 5A and 9 to show cause.

Mr. Rajiv Chavan for respondent No.2 to show cause.

Mr. R.V. Govilkar for respondent No.3 to show cause.

CORAM: **H.L. GOKHALE, Ag. C.J.,** &
V.M. KANADE, J.

DATE: **JANUARY 24, 2007**.

P.C.

Heard Mr. Singhvi in support of this notice of motion and Mr. Jagtiyani appearing for the petitioners.

2. This motion is required to be filed in view of the order passed by the earlier Division Bench dated 6th October 2005, which prevented destruction of mangroves until further orders. In this motion prayer (a) is for permission for; widening/deepening training of the Mahul Creek from Eastern Express High way in B.P.T. Road Mumbai to control the flooding and save the life and property without insisting the replantation thereof by modifying the order dated 6th October 2005. As far as this prayer is concerned reliance is placed on the Fact Finding Committee appointed under the Chairmanship of Shri Madhav Chitale for the study after heavy flooding on 26/27th July 2005. The Committee had recommended that the width of Mahul creek be widened. There was a report earlier made by the Consultants M/s Watson Hawkay International Limited who had recommended deepening of the creek by 35 meters at B.P.T Road Culvert and 18 meters at Tansa Main Culvert. However, the Chitale Committee has recommended 50% more widening of the creek being in tidal range. The submission of Mr. Singhvi is that if this has to be done the mangroves, which come in this particular area, will have to be removed. Mr. Singhvi has drawn our attention to the report made by

Shri Chitale and in particular relevant passages therefrom. The report in clear terms, with reference to the report earlier made by the Consultants in BRIMSTOWAD project, made a similar recommendation by providing 50% more width of the creek. In fact it states that the concerned authorities should take steps in this behalf early.

3. Mr. Singhvi has referred to the earlier order by the Division Bench on 30th August 2006 in Writ Petition No. 2684 of 2005. This petition was filed to see to it that this flooding is averted. A reference was made in that order to the BRIMSTOWAD report and in paragraph 2 of that order the Division Bench has observed that the BRIMSTOWAD project will have to be permitted to be proceeded and it cannot be allowed to be stuck up for want of financial resources. The Division Bench also referred to the affidavit made by Shri Johny Joseph, Municipal Commissioner dated 26th July 2006. The affidavit refers to the fact of heavy rain fall and flooding in June/July 2005. It also points out in paragraph 4 that the fact finding report has recommended construction of Megacity nalla from Postal Colony Chembur to Mahul Creek. This reference is in sub-para (b) of paragraph 4 of the said affidavit. It also refers to the recommendations of the fact finding committee of Shri Chitale in paragraph 5. The submission of Mr. Singhvi is that in view of this order passed by this court earlier, the Corporation should be permitted to proceed with the work and the order passed by this court on 6th October 2005 in PIL No. 87 of

2004 be modified accordingly.

4 Mr. Jagtiyani appearing for the petitioners has opposed this prayer. He has pointed out this will lead to destruction of mangroves over a large area. In his submission mangroves are necessary to control rain water and flood and he has made reference to some of the observations made in the very report of Shri Chitale at different places which points out utility of mangroves.

5. There is no difficulty in accepting that mangroves are necessary in coastal area as also wherever they grow for maintaining the ecological balance. At the same time when expert bodies have specifically recommended that widening of a particular creek is necessary so that the water course is widened for better flow of rain water, this court cannot substitute its own view in place of the report of expert bodies. In our view the order dated 6th October 2005 passed in PIL Writ Petition 87 of 2004 will therefore have to be modified accordingly.

6. We have gone through the reply filed by the petitioners. It refers to the various observations made in the Chitale Committee Report which emphasis importance and significance of mangroves. However, as stated above when a expert committee has specifically recommended widening of a particular water channel , we cannot take a different view. Accordingly this

motion is granted in terms of prayer clause (a). We however, make it clear that the Corporation shall see to it that the removal of mangroves will take place only wherever it is necessary for the purpose of widening of the creek.

7. At this stage Mr. Jagtiyani submits that the Corporation should have a replantation programme of mangroves. As far as this aspect is concerned the Corporation has specifically stated that it is difficult to have any such programme. In this connection Mr. Singhvi brought to our notice a letter dated 10th March 2006 from the Principal Secretary, Environment Department of the State Government asking the Corporation to obtain appropriate directions from this court.

The Notice of Motion stands disposed of accordingly.

ACTING CHIEF JUSTICE

V.M. KANADE, J.